IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5522 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANSUKHLAL DEVRAJBHAI TILWA

Versus

STATE OF GUJARAT

Appearance:

MR D.M.THAKKAR, FOR M/S THAKKAR ASSOC. for Petitioner

MR H.L.JANI, AGP for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 31/08/2000

ORAL JUDGEMENT

1. Heard learned counsel Mr. D.M. Thakkar for M/s Thakkar Associates for the petitioner, Mr. Jani learned AGP for respondent no.1 State of Gujarat and Ms. Davawala, learned counsel for respondent no.4 Union of

India. Considered the affidavits filed on behalf of detaining authority, State of Gujarat as well as Union of India.

2. The petitioner who is under preventive detention, has challenged in this petition under Article 226 of the Constitution of India, the order of detention dated 14.5.2000 passed by the learned District Magistrate, Junagadh in exercise of powers conferred on her under sub-sec.(2) of sec.3 of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commoddities Act, 1980 (hereinafter referred to as the "Act"). While arriving at a subjective satisfaction, the detaining authority has observed that the petitioner is involved in black marketing activities and has also been found involved in such activities which may hamper the maintenance of supply of wheat distribution through Fair Price Shop outlets.

3. The impugned order of detention is challenged by the petitioner on various grounds, but learned counsel Mr. D.M. Thakkar appearing for the petitioner detenu has confined his arguments mainly on two grounds. Firstly, it is submitted that the order of detention is passed without proper application of mind and in haste and, therefore, authorities have even not cared to supply relevant documents which were required to be supplied as observed by this Court (Coram : M.R.Calla, J) in a decision in the case of Koli Sureshbhai Balabhai Parmar v/s District Magistrate, Bhavnagar & Others, reported in 2000(2) GLH 540. Secondly, it is submitted that the representation made by the detenu to the detaining authority as well as to the Union of India, is not considered expeditiously and delay caused in considering the same should be held to be fatal and order revoking order of detention ought to have been passed in light of the representation made by the petitioner at the earliest. Learned counsel Mr. Thakkar has mainly argued ground (m) of the petition before this Court. I would like to refer the same to appreciate the submissions made by learned counsel Mr. Thakkar in this behalf. Ground (m) reads as under :-

"(m) The petitioner submits that the advocate of the petitioner has sent a representation addressed to the detaining authority dtd. 5.6.2000 by registered speed post on 5.6.2000. Annexed hereto and marked as ANNEXURE : "E" is the copy of the representation dtd. 5.6.2000. A zerox copy of the postal slip is annexed herewith and marked as ANNEXURE : "F". However, the

petitioner is not informed about the decision on the representation till this date. The petitioner submits that the detaining authority has to satisfy this Hon'ble High Court that the representation of the petitioner is expeditiously considered by the competent authority. The petitioner submits that failing to establish above facts, it cannot be said that the representation of the petitioner was expeditiously decided by the competent authority in accordance with law and in that case, the continued detention of the petitioner would be illegal. The petitioner has demanded certain documents which were not supplied to the petitioner as referred to in the said representation. However, the said documents though demanded are not supplied by the detaining authority to the petitioner till date. Non-supply of the said documents has deprived the right of the petitioner of making effective representation, which is violative of Art.22(5) of the Constitution of India. Therefore, the continued detention of the petitioner is bad."

In nutshell, it is argued that non-supply of documents as demanded in the representation referred to above and delay in considering representation by detaining authority as well as by the Central Government - respondent no.4 has affected the right of the petitioner of making effective representation which is violative of Article 22(5) of the Constitution of India and, therefore, the continued detention of the petitioner is bad.

4. I have gone through the affidavit-in-reply filed by three different authorities viz. (i) Deputy Secretary to the Government of Gujarat, Food, Civil Supplies & Consumer Affairs Department, Sachivalaya, Gandhinagar, (ii) Mr.R.N.Tripathi, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs and Public Distribution, New Delhi, and (iii) Sunaina Tomar, District Magistrate, Junagadh (Detaining Authority). In the affidavit-in-reply filed by Sunaina Tomar, District Magistrate, Junagadh (Detaining Authority), while replying to the averments made in ground (m) of the petition, it has been stated as under:-

"(m) With reference to ground (m), I deny the contentions raised therein. I submit that the representation dated 5.6.2000, was received by this office by post on

> 7th May 2000. I submit that 10th and 11th June were holidays. The petitioner has been given a reply on 12th June 2000 through the Superintendent Central Jail, Vadodara. I submit that in the aforesaid reply, it is stated that the State Government has already approved of the detention order on 25th May 2000, hence, the detaining authority can no longer decide the same. A copy of the aforesaid representation was forwarded to the State Government on 12th June 2000. A copy of the aforesaid reply dated 12.6.2000 is annexed herewith and marked as ANNEXURE:I"

5. It clearly transpires from the plain reading of the reply to ground (m) reproduced herein above that the period of 7th, 8th and 9th has remained unexplained. I agree that on 10th & 11th, the office of the District Magistrate was closed because of holidays, but it seems that office has not done anything immediately on receipt of the representation made by the detenu on 7.5.2000. As per settled legal position, delay of each day requires to be explained in convincing manner. Mr. Thakkar has rightly relied on the decision in the case of Urmilaben Navnitlal Gandhi v/s The Commissioner of Police, Surat City & Ors., reported in 1994(2) GLH (UJ) P.10 . In that case, relying on the judgment in the case of Navalshanker Ishwarlal Dave v/s State of Gujarat, reported in AIR 1994 SC 1446, this Court through Justice A.N.Divecha (as he then was), has held that " five days delay was fatal as the same was not properly explained and, therefore, the same was violative of Article 22(5) of the Constitution of India." This is also a case of unexplained delay of atleast two days, if not three days so far as detaining authority is concerned. As admitted by the deponent of the affidavit, she had not to apply her mind and representation was to be forwarded to the State Government. So, Mr. Thakkar has rightly submitted that without going into the merits of the first argument advanced by him, the impugned order of detention can be quashed and set aside on the sole ground of delay in forwarding and considering representation. He has further pointed out that in this case, at third stage when representation was to be considered by respondent no.4 Union of India, machinery took five days in considering the representation and in the affidavit filed on behalf of respondent no.4 Union of India, an attempt is made to explain that delay, but the same is not totally explained. Each day's delay is not explained.

Deponent has tried to narrate the movement of file during this period. It is evidently clear that Central Government received representation on 6th June and decision was taken on 14th June. Relevant para in the affidavit filed by Mr. R.N. Tripathi, Deputy Secretary for Union of India, reads as under:-

" That a representation dated 5.6.2000 in favour of the detenu was received in the Central Government on 6.6.2000 and in the concerned section on 8.6.2000. After considering the representation alongwith other relevant records, the same was rejected by the Competent Authority in the Central Government on 14.6.2000. 10.6.2000 and 11.6.2000 and 15.6.2000 are closed holidays. The decision of the Central Government was conveyed to the Superintendent, Central Jail, Baroda on 16.6.2000. ....".

6. It is pertinent to note that what had happened between 6th & 8th i.e. on 7th June,2000, has not been explained in the affidavit. There is no explanation as to what had happened between 8th & 14th June, 2000. Ms. Davawala, learned counsel appearing for respondent no.4 Union of India has submitted that in view of the decision of the Apex Court in the case of Smt. Kamlabai v/s Commissioner of Police, Nagpur & Ors.,reported in 1993(3) JT 666, the authority is not required to explain each day's delay and this Court should hold that the time taken by the Central Government in taking decision qua the representation made by the detenu, cannot be said to be unreasonable and, therefore, there was no delay caused in taking decision. It has been observed in the said decision that " the delay by itself is not a ground which proves to be fatal, if there is explanation. However, a short delay cannot be given undue importance having regard to the administrative actions. " I agree that the authority has tried to explain delay, but there is no satisfactory and total explanation as to the delay caused. The case of the present petitioner, considering the totality of the facts and circumstances of the case, cannot be compared with the case of Smt. Kamlabai (supra) as certain days delay have remained unexplained by the Central Government. My attention is drawn to the decision of this Court (Coram : A.L.Dave,J) rendered on 16.3.2000 in the case of Mulshankar Kalyanbhai Jani v/s State of Gujarat in Spl.Civil Applicaation No. 9664/99 wherein this Court has held that delay of even one day can be said to be fatal. I would like to reproduce relevant observations made by the Court in para-6 in this regard, which are as under:-

" Having regard to the rival side contentions, the first factor that catches attention is the delay caused in forwarding the representation by the detaining authority. Admittedly, the representation made on behalf of the detenu was received on 16.11.1999 and, therefore, the detaining authority was only expected to forward the representation to the State Government. The representation is forwarded on 18.11.1999. The detaining authority has not explained as to at what point of time, the representation was received on 16.11.1999 and how it was dealt with on 17.11.1999 and, therefore, taking a liberal view that the representation may have been received on 16.11.1999 by evening, then also, the time consumed in forwarding till 18.11.1999 remains unexplained, i.e. there is no explanation coming forward as to what was done in respect of the representation on 17.11.1999. For this one day, probably, the representation remained unattended. This inaction and want of attention to the representation can be considered as sufficient to have infringed the right of the detenu of making an effective representation."

7. Learned Judge has considered all the relevant aspects while holding one day's delay to be fatal. For the sake of arguments even if it is accepted, as submitted by learned counsel Ms. Davawala, that the Central Government has reasonably explained the time taken in dealing with the representation filed by the detenu, even than, same would not adversely affect the case of the petitioner because the delay caused by the detaining authority at the initial stage while forwarding representation tendered by the petitioner detenu has remained unexplained and can be held to be fatal.

8. This Court has not to consider the merits of the order of detention, but it seems that there is some force in the argument of Mr. Thakkar that there is some confusion as to recording of statement of one of the card holders mentioned in the schedule attached with the order of detention. Schedule is at page 123. Plain reading of the order passed by the detaining authority vis-a-vis schedule at page 123, creates an impression that the officer who had recorded statements of five card holders, must have recorded the statement of Mahashankar Tribhovandas Vyas. Subsequently, the authorities have

tried to explain that statement of Arvind Mahashankar Vyas - another card holder and son of Mahashankar Tribhovandas Vyas was recorded. It is difficult to conclude that no statement of Mahashankar Tribhovandas Vyas, in light of the language of para-12 of the order, was ever recorded and this confused state of affairs reflected in the papers available, may have created some hurdle in making out a case of defence before the detaining authority. Any type of disability emerging from the set of papers supplied to the detenu can be termed as a hurdle in forming the case of defence and should be viewed seriously amounting to the disability in making effective representation to the authority concerned.

9. For the reasons aforesaid, petition is allowed. Impugned order of detention dated 14.5.2000 passed by the learned District Magistrate, Junagadh against detenu Mansukhlal Devrajbhai Tilva, is hereby quashed and set aside. Rule is made absolute. No costs. Petitioner-detenu Shri Mansukhlal Devrajbhai Tilva be set at liberty forthwith if not required to be detained in any other case.

31.8.2000 [C.K. BUCH, J]
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